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BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRMLA LICENSE NO. 413-1127
)	
THE COMMISSIONER OF BUSINESS)	ACCUSATION
OVERSIGHT,)	
)	
Complainant,)	
)	
v.)	
)	
)	
KWIK MORTGAGE CORPORATION)	
)	
Respondent.)	
)	
)	

Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), is informed and believes, and based upon such information and belief, alleges and charges Respondent Kwik Mortgage Corporation (Kwik) as follows:

I.

Jurisdiction and Venue

1. The Commissioner brings this action under the provisions of Financial Code section 50513 and the rules and regulations promulgated thereunder.

2. The Commissioner is authorized to administer and enforce the California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) (CRMLA) and the rules issued under title 10 of the California Code of Regulations (CCR) that regulate the business and activities of residential mortgage lenders.

II.

Statement of Facts

3. Kwik is a residential mortgage lender licensed by the Commissioner under the CRMLA. Kwik has its principal place of business located at Southfield Center, One Cragwood Road, Suite 103-A, Plainfield, New Jersey. At all relevant times herein, Kwik employed mortgage loan originators and operated branch locations throughout California.

4. Civil Code section 2948.5 and Financial Code section 50204, subdivision (o) prohibit a lender from charging interest for more than one day from the date the loan proceeds are disbursed from escrow, unless the borrower voluntarily elects to have the proceeds disbursed on a Monday or a day immediately following a bank holiday, and the lender discloses the amount of per diem interest the borrower will pay as a result of the election (typically in the form of a California Additional Per Diem Interest Charge Disclosure or other disclosure document, which sets forth the amount of daily interest charged under the loan).

5. During the Department's November 2016 regulatory examination of Kwik, the Commissioner determined, in at least seven of the funded loan files reviewed, borrowers were provided and signed California Additional Per Diem Interest Charge Disclosure forms in which they elected to have their loan proceeds disbursed on a Monday or a day immediately following a bank holiday, but the documents the borrowers signed failed to include the amount of daily per diem interest to be charged under the loan in violation of the CRMLA. Financial Code section 50204, subdivision (e) prohibits licensees from obtaining or inducing an agreement or other instrument in which blanks are left to be filled in after execution. The Commissioner previously cited Kwik for violating Financial Code section 50204, subdivision (e) during the Department's December 2012 regulatory examination of the company.

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III.

Applicable Statutes

6. Civil Code section 2948.5 provides:

(a) A borrower shall not be required to pay interest on a principal obligation under a promissory note secured by a mortgage or deed of trust on real property improved with between one to four residential dwelling units for any period that meets any of the following requirements:

(1) Is more than one day prior to the date that the loan proceeds are disbursed from escrow.

(2) In the event of no escrow, if a request for recording is made in connection with the disbursement, is more than one day prior to the date the loan proceeds are disbursed to the borrower, to a third party on behalf of the borrower, or to the lender to satisfy an existing obligation of the borrower.

(3) In all other circumstances where there is no escrow and no request for recording, is prior to the date funds are disbursed to the borrower, to a third party on behalf of the borrower, or to the lender to satisfy an existing obligation of the borrower.

(b) Interest may commence to accrue on the business day immediately preceding the day of disbursement, for obligations described in paragraphs (1) and (2) of subdivision (a) if both of the following occur:

(1) The borrower affirmatively requests, and the lender agrees, that the disbursement will occur on Monday, or a day immediately following a bank holiday.

(2) The following information is disclosed to the borrower in writing: (A) the amount of additional per diem interest charged to facilitate disbursement on Monday or the day following a holiday, as the case may be, and (B) that it may be possible to avoid the additional per diem interest charge by disbursing the loan proceeds on a day immediately following a business day. This disclosure shall be provided to the borrower and acknowledged by the borrower by signing a copy of the disclosure document prior to placing funds in escrow.

(c) This section does not apply to a loan that is subject to subdivision (c) of Section 10242 of the Business and Professions Code.

7. Financial Code section 50204 provides in pertinent part:
- A licensee may not do any of the following:
- (e) Obtain or induce an agreement or other instrument in which blanks are left to be filled in after execution.
- (o) Commit an act in violation of Section 2948.5 of the Civil Code. Evidence of compliance with Section 2948.5 of the Civil Code may be evidenced by (1) a certification executed by the licensee, at no cost to the borrower, pursuant to Section 2015.5 of the Code of Civil Procedure, or (2) other evidence in the loan file acceptable to the commissioner[.]
8. Financial Code section 50513 provides in pertinent part:
- (a) The commissioner may do one or more of the following:
- (4) Impose fines on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator pursuant to subdivisions (b), (c), and (d).
- (b) The commissioner may impose a civil penalty on a mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator, if the commissioner finds, on the record after notice and opportunity for hearing, that the mortgage loan originator or any residential mortgage lender or servicer licensee employing a mortgage loan originator has violated or failed to comply with any requirement of this division or any regulation prescribed by the commissioner under this division or order issued under authority of this division.
- (c) The maximum amount of penalty for each act or omission described in subdivision (b) shall be twenty-five thousand dollars (\$25,000).
- (d) Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

IV.**Prayer**

The Commissioner finds that, by reason of the foregoing, Kwik has violated Financial Code section 50204, subdivision (e), by allowing borrowers to sign California per diem interest disclosure documents with blanks to be filed in after execution, and based thereon, grounds exist to assess penalties against Kwik under Financial Code section 50513, subdivision (b).

WHEREFORE, IT IS PRAYED that:

Under Financial Code section 50513, subdivision (b), penalties be levied against Kwik for at least seven violations of Financial Code section 50204, subdivision (e), obtaining or inducing agreements or other instruments in which blanks are left to be filed in after execution, according to proof, but in an amount of at least \$10,000.00 per violation.

Dated: January 10, 2018

Los Angeles, California

JAN LYNN OWEN

Commissioner of Business Oversight

By _____

Blaine A. Noblett

Senior Counsel

Enforcement Division